



SEN. ELIZABETH H. MITCHELL, CHAIR
REP. MARILYN E. CANAVAN, CHAIR

MEMBERS:

SEN. PHILIP L. BARTLETT, II
SEN. JONATHAN T.E. COURTNEY
SEN. DANA L. DOW
SEN. JOSEPH C. PERRY
SEN. KEVIN L. RAYE
REP. ANDREA M. BOLAND
REP. SCOTT E. LANSLEY
REP. EVERETT W. MCLEOD, SR.
REP. PEGGY A. PENDLETON
REP. MICHAEL A. VAUGHAN

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
February 27, 2008

CALL TO ORDER

The Chair, Senator Mitchell, called the Government Oversight Committee to order at 2:12 p.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Mitchell, Sen. Bartlett, and Sen. Courtney Joining the meeting in progress: Sen. Raye and Sen. Dow Absent: Sen. Perry
Representatives:	Rep. Canavan, Rep. Pendleton, and Rep. Boland Joining the meeting in progress: Rep. Lansley and Rep. Vaughan Absent: Rep. McLeod
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Jennifer Reichenbach, Senior Analyst, OPEGA Etta Begin, Adm. Secretary, OPEGA
Judicial Branch	Honorable Charles C. LaVerdiere, Deputy Chief Judge, Maine District Court Sandy Lewis, Judicial Secretary, Office of Chief Judge
Executive Branch Officers	Richard Thompson, Chief Information Officer, Office of Information Technology Ruth Quirion, Director of Financial Reporting and Internal Audit, Office of State Controller

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

Members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

PRESENTATION OF FINAL REPORT

• State Boards, Committees, Commissions, and Councils

Director Ashcroft reminded Committee members that this review was on OPEGA's biennial work plan with a focus on opportunities for savings. This report is in a new format for OPEGA, and is called a Fiscal Opportunity Study to distinguish it from a review that would be looking at effectiveness, internal controls or compliance. Like an analytical study it does not necessarily contain findings and management actions and specific recommendations about changes that need to be made. Instead highlighted in the Report are seven Fiscal Opportunities for the Legislature's consideration, as well as four general recommendations for actions that may be taken regarding boards, committees, commissions and councils to help keep costs related to them minimized for upcoming years. The study focused on the potential cost savings and efficiencies that might be found rather than on the effectiveness of any of the boards or commissions that are listed in the Report.

Discussion of the Government Oversight Committee included the following areas:

- whether there are any distinctions made between licensure boards that generate their own fees and State funded boards;
- whether OPEGA could isolate any of the boards that do not receive any general fund dollars;
- how OPEGA estimated savings for the three opportunities totaling \$190,000;
- why the Maine Athletic Commission had \$32,854 in administrative costs;
- whether staff involved in boards that have no activity or limited accomplishments in 2007 have other job responsibilities, and whether there would there be real savings;
- that it is not acceptable that someone contacted as the staff person for a board or commission did not bother to respond or return OPEGA's messages;
- whether OPEGA found any correlation between boards that had expired terms and those that appeared to accomplish very little;
- clarification of what the total 2007 hours represents in the table that list all of the various boards, commissions, and councils;
- why some of the licensing boards were not under the Professional and Financial Regulation Department;
- whether some of the instructions on the survey were not entirely clear;
- whether any boards had a mission statement regarding what they do or gave information as to why they were created;
- whether the costs listed for these boards, such as the Maine Athletic Commission, are covered by General Fund money; and
- how much of the facility charges being paid are to State universities or departments.

Director Ashcroft thanked all of the Clerks of the boards for information they provided and the Secretary of State and his staff.

Director Ashcroft said she has been asked to do a presentation of the Report on March 5, 2008 to the State and Local Government Committee.

A meeting will be scheduled for the public comment period on this Report. Director Ashcroft will request that a representative from the Office of Licensing and Registration be at the meeting to answer questions about the Maine Athletic Commission. Before that meeting, OPEGA will also attempt to determine whether there is a State agency affiliated with any of the boards that did not respond to OPEGA's survey.

NEW BUSINESS

• Status of Follow Up on Open Findings of OPEGA Reports

GOC members have asked about the status of findings from previous OPEGA reports and what actions have been taken. Director Ashcroft thought it would be helpful if the Committee heard directly from the agencies involved. Unfortunately Commissioner Richardson is ill and will not be attending the meeting to talk about Economic Development Programs in Maine.

Agency Briefings

- Performance Audit of Guardians *ad litem* for Children in Child Protection Cases

Chair Mitchell recognized Charles LaVerdiere, Deputy Chief Judge, Maine District Court.

Judge LaVerdiere said he was at the GOC meeting on behalf of the Judicial Branch to give an update on the progress that has been made with regard to guardian *ad litem*s. One of the things the Judicial has done as a result of the OPEGA Report was to form a Task Force to examine the entire guardian *ad litem* process and to develop a plan for how they are going to deal with guardian *ad litem*s in the future. The Task Force prepared a report which was issued a few weeks ago and copies will be sent to the GOC.

Judge LaVerdiere's comments included:

- the Guardian *ad litem* Program is not funded, they are paid out of the same fund that the Courts use to pay for attorneys who represent indigent criminal defendants;
- the Report contains recommendations to the Chief Justice and to the Supreme Court. The Chief Justice and members of the Supreme Court have not had the opportunity to review the Report in detail. The Report was done by an independent advisory committee and the Judicial may not agree with everything in it.
- Some recommendations can be accomplished within the resources the Judicial has, but the majority of the recommendations will require some help financially from the Legislature;
- OPEGA's Report recommended putting together specific requests to the Legislature for funding and the Judicial intends to do that in the next legislative session;
- a presentation will be done before the Judiciary Joint Standing Committee in the 123rd Legislature;
- actions the Court is presently taking include updating and printing the Guardian *ad litem* material that is being handed out, looking at the complaint process and how it can be improved, and what can be done to provide people with an opportunity to file complaints, to be heard, to feel that their complaint has been heard and to take appropriate action when necessary.

The Government Oversight Committee thanked Judge LaVerdiere for attending the meeting and the information he provided.

Director Ashcroft told the GOC that the price tag included in the Task Force's report is not all from Title 22 cases. The Judicial took the opportunity when establishing the Task Force to also look at Title 19-A and a lot of the additional costs are related to finding a way to fund guardians for Title 19-A cases.

- Economic Development Programs in Maine

Commissioner Richardson was unable to attend the meeting.

- Review of State-wide Planning and Management of Information Technology

Richard Thompson, CIO, Department of Information Technology was recognized by Chair Mitchell. Richard Thompson introduced Ruth Quirion, Director of Internal Audits, Office of the State Controller. Mr. Thompson updated what actions have been taken by the Information Technology Department on recommendations developed from the Jefferson Wells International Report and the subsequent detailed report of OPEGA. OPEGA's report included a multi-year audit plan that was to be used as a mechanism to continuously improve both safety and security and operation of Information Technology. In November, 2007 OIT hired an internal auditor who has completed his first draft report. IT is beginning to go through a process, much like what the GOC and OPEGA does with their auditees. The original report by OPEGA and JWI, measured the level of control for a standard set of IT risks and found OIT had a satisfactory level of control for 11% of the risk areas with 89% at an undesirable level of control. In the latest evaluation, IT is still lacking, but has improved to a 33% satisfactory level of control and 67% undesirable level of control. Mr. Thompson is pleased with the progress being made. The IT auditor is able to give immediate response and positive feedback with good suggestions to implement that improves the process. A reasonable time line to get to 90% is unknown to him in a governmental environment, but he anticipated at least five years from the starting point of late 2005 or early 2006.

Mr. Thompson said the two most significant findings in the original report centered around security and business continuity planning. OIT has done things and made moves that have been helpful, particularly new products that have been put into place in operations in the physical plant. OIT has implemented an application deployment certification. A system does not go live until its security has been scrutinized, what its impact will be on the network, and that its performance testing shows it is doing what it is supposed to do.

The State is still at high risk regarding security. OIT has identified a number of things it will do to improve security.

Business continuity planning is another item that has to be done and was listed as a high risk, but is one of the items that resources and time make it difficult to respond to. OIT has done a little planning, but has a long way to go.

Mr. Thompson said OIT has adopted a formal methodology and began an assertive training program. It is in the process of developing a quality assurance process regarding application deployment certification process.

One major weakness was also found in the physical security and changes continue to be made.

The members of the GOC thanked Mr. Thompson and Ms. Quirion for the information they provided. They asked that they be kept informed of the progress being made and to let the Committee or Director Ashcroft know if cuts to OIT's budget would prohibit it from achieving the goals in the 5 year plan.

Director Ashcroft said OPEGA is in the process of looking at what is being done at OIT and deciding which issues can be closed. She will get back to the Committee with her assessment of where they stand.

Chair Mitchell asked if there was objection to taking an item out of order. Hearing none, the Committee moved to **Report From OPEGA Director - Changes to OPEGA Statute – LD 2212.**

REPORT FROM OPEGA DIRECTOR

• Changes to OPEGA Statute – LD 2212

In October, 2007 Director Ashcroft informed the GOC she had received a request from the Right to Know Advisory Committee to answer particular questions related to the public disclosure exemptions for things in OPEGA's statute. She referred the Committee to her memo to Senator Barry Hobbins and Members of the Right to Know Advisory Committee dated October 22, 2007. Some questions and Director Ashcroft's responses included:

- Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

Director Ashcroft described a couple of situations where it had been a little murky as to what the interpretation of the statute should be and how it may have caused confusion.

- Does your agency recommend changes to this exception?

Director Ashcroft suggested, in general, there be some effort to clarify the portions she believed were not as clear as they could be.

Following Director Ashcroft's response to the Right To Know Advisory Committee she advised them that she had a request in to the Attorney General for an opinion around the questions that had proposed problems for OPEGA in the statute. Subsequent to that, Director Ashcroft had received a request to provide suggestions for specific changes to the language in the statute, which she provided. She did not know what was going to be done with the suggestions, but assumed it was still just being discussed with the Right To Know Advisory Committee. She learned that the language had been included into a bill which is LD 2212 and is before the Judiciary Committee. The language in LD 2212 is not the language that should be there. Director Ashcroft's intent was to try to clarify the confidentiality provisions to reduce confusion for the reader and so OPEGA would not have to keep asking for the AG's interpretation on some of the situations that have come up. In addition under the current statute, there is also a piece that states OPEGA is only allowed to disclose working papers to the agency that is subject to the review. OPEGA has found, under certain circumstances, where it would want to share its working papers in order to work more cooperatively and efficiently with the State Auditor's Office, the Internal Audit Department in the State Controller's Office, and the AG's Office. Director Ashcroft said she would like to have an opportunity to process with the GOC what, if any, language changes there should be and it would be helpful to have Linda Pistner from the AG's Office present.

The GOC will meet next week to discuss LD 2212 in further detail and will invite Attorney Linda Pistner to that meeting. Director Ashcroft reported that the Judiciary Committee will be discussing LD 2212 on Thursday, March 6, 2008.

• Fiscal Opportunities Related to Contracting for Health and Human Services

Director Ashcroft thanked Commissioner Harvey and her staff for meeting with OPEGA to discuss Contracting for Health and Human Services. This review is still in progress but OPEGA is honoring the GOC's request to get information to it as soon as possible.

Basic points outlined by Director Ashcroft included:

- fiscal opportunities that have been identified related to OPEGA's review of cost settlements that occur on cost sharing contracts, non-Medicaid costs settled contracts for social services;
- the fiscal opportunities identified involve the timing of how the State pays some vendors under the contracts and

when it receives money back for repayment by the vendors of money received by the State in excess of what was needed;

- OPEGA had identified that this may be an area of concern and selected a sample of 28 costs settlements that had been done on vendors. There were multiple contracts that were settled at one time for some of the vendors and out of those costs settlements the DHHS' Office of Auditors had determined that for 25 of the 28 vendors, money was owed to the State at the end of those contract periods. The total amount owed, prior to any appeals, was \$2,681,582 plus related interest of \$254,164. OPEGA calculated the median amount owed by the vendors and found, not including the interest, it was approximately 3.4% of the total amount of the original contracts. In nine of the audits, the auditor found that the vendor still owed the State from contract periods that had been settled prior to the current period. The amount owed from prior years was approximately \$1.1 million plus interest of about \$79,000. The auditors determined that the State owed vendors in 5 of the 28 cost-settlement audits for a total of \$62,095 in the current period and \$33,065 for prior periods.
- Nine of the vendors in OPEGA's sample have yet to repay amounts due to the State even though the contract period closed in 2003-2004 and the cost settlements were completed prior to November, 2007. DHHS Service Center records indicate the total amount currently due from vendors on cost-settlements in OPEGA's sample is \$1,610,725 for current and prior period balances plus interest of \$161,200. One of the vendors is no longer in business and according to DHHS's Office of Audit, \$700,897 of these balances are still under appeal and could be adjusted.

Director Ashcroft referred members to the memo received from the Commissioner's Office in response to the fiscal opportunities related to Contracting for Health and Human Services and OPEGA's meeting with the Commissioner and her staff.

The members of the GOC had questions regarding the fiscal opportunities related to Contracting for Health and Human Services and asked that Commissioner Harvey be invited to the next meeting to address the issues raised by the Committee.

Chair Mitchell suggested that the next Government Oversight Committee be set Monday, March 3, 2008 at 2:00 pm. The agenda items will be **Changes to OPEGA Statute – LD 2212** and **Fiscal Opportunities Related to Contracting for Health and Human Services** and that Director Ashcroft ask both Attorney Linda Pistner and Commissioner Harvey to attend the meeting.

SUMMARY OF JANUARY 23, 2008 MEETING

Not discussed.

REPORT FROM OPEGA DIRECTOR

Status of Audits in Progress

Presentation on Status of Audits in Progress not given.

UNFINISHED BUSINESS

None.

SCHEDULE NEXT COMMITTEE MEETING

The next Government Oversight Committee meeting was scheduled for March 3, 2008 at 2:00 p.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 4:20 p.m. (Motion by Sen. Bartlett, second by Rep. Canavan, unanimous).